ANDOVER CONSERVATION COMMISSION MEETING MINUTES FEBRUARY 19, 2013

Town of Andover 36 Bartlet Street 3rd Floor Conference Room 7:48pm

CONSERVATION COMMISSION MEMBERS IN ATTENDANCE:

Chairman Donald Cooper, Vice Chairman Michael Walsh, Commissioner Fink, Commissioner Driscoll, Commissioner Jon Honea, Commissioner Greenwood and Commissioner Kevin Porter. Staff Members present were Robert Douglas, Director of Conservation and Linda Cleary, Conservation Agent.

SCHEDULED ITEMS:

SunGen Solar Project

Present in Interest: Mark Johnson, Kathryn Morin, Carol McGravey and Dan Holt

Continued from February 5, 2013 meeting to review ownership in fee vs. conservation restriction for Lot B South Street. There are three issues that remain unresolved, access including public access, maintenance access and emergency access, LSP study recommendations and obligations to Natural Heritage.

Carol McGravey addressed the Commission regarding the ownership of Lot B and the access to the site. The main concern is if the Town takes ownership in fee of the property, it will not have access for a number of years. SunGen, on the other hand, will have access to the do the work mandated by Natural Heritage while the solar array is in commission. Attorney Johnson has agreed to execute an Indemnification Agreement regarding the work done while SunGen is performing the work required by Natural Heritage. Natural Heritage does require the Town to have access to the property for purposes of inspection to ensure their (Natural Heritage) obligations are being met. The Town has responsibility for damage to the property, but no access to address the damage or for unauthorized activity on the property. The Town should have some sort of access, other than public access, to address damage or unauthorized activity.

If the Town held the Conservation Restriction, SunGen would own the property and access would not be an issue since the Town would not own the property.

Attorney Johnson addressed the Commission. The LSP provided the scope of work as requested at the last Conservation Meeting. The Town will have the right to do periodic inspections, with limited number of visits per year at a pre-arranged time with notice to SunGen. Attorney Johnson requested a clarification of what would be considered emergency access. The police and fire departments have access to the property. Other than that, someone will need to be present to provide the access for any damage or unauthorized activity.

The LSP work is moving forward. Staff has received two estimates for the work to be performed and a request will be sent to the Finance Committee for \$10,000 to perform the testing.

Chairman Cooper stated that the Commission should own the property in fee and not hold the Conservation Restriction. The additional testing will need to be done, per the consultants' recommendation. This is a commercial enterprise that will need at least a Conservation Restriction to move the project forward with Natural Heritage.

Commissioner Driscoll stated that the Town has responsibilities to make sure the monitoring is being done because the Town has the responsibility to Natural Heritage.

Commissioner Porter expressed his opinion that there are too many restrictions and the Town needs access to the property.

Commissioner Greenwood stated there is access to the property by the River or across the National Grid easement with permission.

Chairman Cooper stated there are still three issues outstanding at this time:

- 1. Money for the testing;
- 2. Get the testing done; and
- 3. The results of the testing.

There is no need to discuss access further until the testing is complete. Staff recommended continuing moving forward with the dual track of ownership in fee and the Conservation Restriction while waiting for the test results. If the test comes back clean, the Commission would accept the property in fee with some sort of limited public access. If the only access is via the river, further discussion will need to take place. Attorney Johnson reiterated that there would be no public access.

Chairman Cooper asked for a Motion. Commissioner Greenwood made a Motion to move forward with ownership in fee with better public access, bring the request to the Finance Committee to fund the testing and the Conservation Commission is not interested in holding the Conservation Restriction. The Motion was seconded by Commissioner Honea and unanimously approved.

Doherty Middle School 50 Bartlet Street

Present in Interest: Rick Gagnon, Thomas Murphy

Staff Recommendation: Continue to March 5, 2013 at 8:15pm.

Public Hearing on a Notice of Intent filed by the Town of Andover, under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, sec 40 and/or the Andover Wetlands Protection By-Law, Article XIV, for the proposed site improvements including site lighting, parking, sidewalks, curbing, sewer utilities for the future youth center and stormwater management improvements.

Chairman Cooper asked for a Motion. Vice Chairman Walsh made a Motion to continue to March 5, 2013 at 8:15pm per Applicant's request; it was seconded by Commissioner Greenwood and unanimously approved.

221 Highland Road

Present in Interest: Bill Walsh, Leyla Schimmel, Bob Murphy, Andrew Berman, Sean Brosnan, Sherry Tupper, Sami Herbawi and Christine Photis.

Staff Recommendation: Close and Issue the Order of Conditions.

Continued Public Hearing on a Notice of Intent filed by Robert G. Murphy & Associates, Inc., under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, sec. 40 and/or the Andover Wetlands Protection By-Law, Article XIV, for the proposed removal of invasive plant species, tree stumps and machine parts, including restoring jurisdictional filled area, placement of wooden sheds and fencing.

Agent Cleary presented this to the Commission. This was continued from August 21, 2012 for purposes of a site visit on September 8, 2012 and for submittal and plan requirements to be met by Applicant. This was then continued from December 13, 2012 for purposes of submitting a revised plan depicting items previously requested by the Commission and payment of fees due under the local By-Law. This was then continued from February 5, 2013 for purposes of confirming tree line to remain and to distinguish between lawn and naturalized area on the approved plan.

Staff has received the revised plan per the Commission's request, showing the proposed tree line to be confirmed and lawn area to be mowed and naturalized area to remain are distinguished. The Enforcement Order will be resurrected on February 26, 2012. Upon issuance of the Order of Conditions and site monitor being appointed, the Enforcement Order should be dismissed.

The Commission discussed and agreed that the mow area depicted on the revised plan "to remain in perpetuity" as mitigation for the violations. This was agreed to by Mr. Murphy and the Applicant in attendance at the Public Hearing.

Commissioner Fink would like to add language under the Environmental Monitoring paragraph stating that the Commission may require additional plantings if the initial plantings do not survive. If additional plantings or remediation are necessary, the environmental monitor will report to staff and staff will advise the Applicant. This concern was covered in the draft language by staff.

Christine Photis addressed the Commission. The new planting of Arborvitae block the view from her property. She understood that the Applicant was to replace the trees that were taken down. She suggested trees more conducive to what was cut down. She asked that the Arborvitae be moved to the 25 foot non-disturb line.

Chairman Cooper upon review of the submitted plan, noted that a few of the trees are planted on the 25 foot non-disturb line, but from the wetland point of view, the Commission cannot tell the Applicant where to plant the trees. The Commission will note that the Applicant may vary the placement of the Arborvitae along with 25 foot non-disturb line.

Mr. Murphy stated that the trees are located based upon soils, ground water, etc. Mr. Murphy agreed that the relocation of 3 or 4 Arborvitae trees along the 25 foot non-disturb line would not be a problem for the Applicant.

Chairman Cooper directed that the Order of Conditions be amended to add "Arborvitae trees to be moved to 25 foot non-disturb line and staff to receive a revised plan".

Sean Brosnen, an abutter, asked the Commission if the plan was to put the property back to the original condition. Why are they replacing with non-native, small trees? The replanting is very small, but over time they will grow and naturalize the area. Mr. Brosnen also provided pictures of flooding for our file.

Commissioner Fink stated that by moving the Arborvitae it will establish a boundary of the 25 foot non-disturb zone and over time the area will reforest.

Chairman Cooper confirmed that there is permission to remove only one species of invasive plant, Japanese Bittersweet, from the area.

Chairman Cooper asked for a Motion. Commissioner Fink made a Motion to close the public hearing and issue the Order of Conditions subject to the receipt of a revised plan showing 4 trees moved to the 25 foot non-disturb line, it was seconded by Commissioner Driscoll and unanimously approved.

90 Beacon Street

Staff Recommendation: Continue to March 19, 2013.

Continued Public Hearing on the Abbreviated Notice of Resource Area Delineation filed by C.A. Investment Trust under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, sec. 40, to confirm the boundary of bordering vegetated wetland and riverfront area.

Applicant requested a continuance to March 19, 2013 at 8:15pm

Chairman Cooper asked for a Motion. Commissioner Honea made a Motion to continue to March 19, 2013 at 8:15pm, it was seconded by Commissioner Driscoll and unanimously approved.

ACTION ITEMS:

600-800 Federal Street

Present in Interest: Matt Volpe, David Gifford, Chad Reynolds, Peter Mayer and Susan Mohn Staff Recommendation: Find project significant.

Consideration of significance or the proposed changes including the addition of a 2,910 s.f. building, pads for a load bank, two transformers, generator, an "Ecobreeze" mechanical unit, three electric car charging stands, two new walks, two dumpster pad areas, minor grading of the parking area adjacent to the new lab, relocation of a catch basin, two new drain manholes and associated pipe, as well as minor modifications to three landscape parking islands.

All of the changes are taking place within the Buffer Zone with established hay bales. The question to be answered is whether these changes will have an effect on the wetlands.

Chairman Cooper noted the building is to be erected within the 50 foot no-build area and the dumpster pad is on the 50 foot no-build line. He would like to see the load bank and transformers moved outside the 50 foot no-build area. Chairman Cooper expressed his concern that these changes are not significant. Commissioner Fink stated if the Order of Conditions is not sufficient to govern the work proposed, then an Amendment will need to be filed.

Susan Mohn provided revised plans to the Commission and reviewed the proposed changes. Impervious surface being reduced by 1500 square feet and swapping paved area running into wetland being replaced by roof area. There are 2 patio areas being removed and there will be an extension of the walkway from the edge of parking to the front door. The Ecobreeze mechanical unit will be outside the 50 no-build area. The shifting of the parking lot islands allows the trucks to gain access to the loading docks and lab facility. The 25 foot no disturbance markers are noted on the plan and work to remove invasive plants as stated in maintenance plan which was approved.

Commissioner Fink noted the new proposed walkway is closer to the wetland which includes a vernal pool. She requested the walkway be moved further away if possible.

Andy Menezes informed the Commission that a community path leading from Federal Street to Chandler Road has been closed during construction. This is an important connection for the community path. The access will be opened after construction and will remain as is it was prior to construction.

Commissioner Greenwood made a Motion to find the changes significant and an Amendment to the Order of Conditions to be filed; it was seconded by Commissioner Driscoll and unanimously approved.

92 Argilla Road

Staff Recommendation: Approve

Request for a temporary cessation of inspection reports.

Vice Chairman Walsh made a Motion to Approve the temporary cessation of reports; it was seconded by Commissioner Driscoll and unanimously approved.

100-110 Corbett Street

Present in Interest: Kristen Perrault, Dave Zarzour and Dave Beshara

Staff Recommendation: Issue Order of Conditions.

Issuance of Order of Conditions. Staff provided revised Order of Conditions at the Meeting with changes discussed. The Order of Conditions addressed the finding in the Enforcement Order and governs the restoration work to be done.

Commissioner Fink also provided an Order of Conditions at the meeting and distributed at the meeting. This Order of Conditions references the Enforcement Order as well as the expansion of the cemetery. Commissioner Fink reviewed her Order of Conditions with the Commission, which included revising the WPA Form 5.

Chairman Cooper stated that Staff would review Commissioner Fink's proposed changes and issue the Order of Conditions at their discretion.

Commissioner Greenwood made a Motion to approve and issue the Order of Conditions as discussed; it was seconded by Commissioner Honea and unanimously approved.

Gregory Circle

Staff Recommendation: Approve.

Request for temporary cessation of inspection reports.

Commissioner Driscoll made a Motion to approve the temporary cessation of inspection reports; it was seconded by Commissioner Fink and unanimously approved.

CONSENT AGENDA:

Minutes

Approval of minutes for meeting of February 5, 2013.

Commissioner Driscoll made a Motion to approve the minutes; it was seconded by Commissioner Honea and unanimously approved.

DISCUSSION ITEMS THAT MAY REQUIRE A VOTE:

30 and 49 Shattuck Road

Notice of Docket Entry regarding Appeal. Order was appealed and denied.

278R High Plain Road

Present in Interest: Don and Lesley Durant and Carol McGravey

The appraisal was received indicating an \$8500 difference between the 2 parcels being swapped. Staff recommends approving the land swap with the \$8500 being paid by the Durants. The warrant article is in place for Town Meeting. Mr. Durant's Attorney has been working Town Counsel and has agreed to transfer monies with the land swap. Commissioner Fink inquired if the state requires a "land for land" swap. She also requested the hearing be continued in order to fully read the appraisal. Commissioner Greenwood asked for clarification as to where the \$8500 would be deposited with the Town. State legislature may govern where the money is deposited from the land swap. Staff agreed to research and advise the Commission.

Commissioner Porter made a Motion to approve the land swap with financial compensation; it was seconded by Commissioner Driscoll and unanimously approved.

2 Possum Hollow Road

Present in Interest: Patrick Seekamp and Susan Shue

Update on Enforcement Order. Patrick Seekamp presented a "punch list" to address the Enforcement Order and begin the restoration process. Erosion controls are in place and functioning. Mr. Seekamp reviewed his plan of action for restoration with the Commission and how he would determine the pre-

existing conditions. Chairman Cooper suggested adding a review of past filings to his "punch list" which may be beneficial in determining pre-existing conditions. Commissioner Fink stated there is "man made" debris mixed with the fill brought to the property. The fill should be clean as well as the outer edge of the slope stabilized. Commissioner Fink also inquired if there were any continuing conditions from the permit for the original house construction, and if this would become a Notice of Intent filing. Staff strongly recommended this remain an Enforcement Order through the restoration process. Items to be added to the "punch list":

- 1. Note continuous conditions;
- 2. Man-made debris to be removed;
- 3. Stabilize slope; and
- 4. Review past filings.

Newport Circle Subdivision

Judgment of Dismissal received affirming the final decision of DEP relative to an Adjudicatory Appeal on the Commission's denial for an Amended Order of Conditions.

Overseers

Commissioner Porter provided an updated copy of the Overseers Manual. He also informed the Commission that the Overseer Meeting would be scheduled for May.

Commissioner Greenwood made a Motion to accept the Overseers Manual as a working document; it was seconded by Commissioner Driscoll and unanimously approved.

The next meeting will be held on March 5, 2013 at 7:45pm.

The meeting was adjourned at 10:00 p.m. by Motion of Commissioner Greenwood, seconded by Commissioner Porter and unanimously approved.

Respectfully submitted by: Lynn Viselli, Recording Secretary